

Boom!!

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 100: CIVIL LITIGATION

MONDAY 28TH NOVEMBER, 2016

DURATION: 3 HOURS

Instructions to Candidates

- (a) This paper contains **Five printed pages** including the cover page, with a total of **Six questions**
- (b) Candidates **MUST** answer **FIVE** questions
- (c) **Question ONE** is compulsory and carries **20 marks**
- (d) **All other questions** carry **10 marks each**
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required

PLEASE TURN OVER

QUESTION ONE

You are the proprietor of Akili & Co. Advocates. You have received urgent instructions from your client Mr. White, who states that he had entered into an agreement of sale with Ms Anne for the purchase of property described on the title document as Busara Block 50/350 Measuring 0.45 Ha (Hereinafter referred to as "the suit property") for Kshs.50,000,000.00. Ms Anne was the registered owner of the suit property.

The terms of payment as per the Agreement were that 10% of the purchase price was payable on the execution of the agreement and the balance was to be paid upon the successful transfer of the suit property to your client Mr. White.

In the documents availed to you, you have established that Mr. White has fully paid the purchase price to Ms Anne. Ms Anne has duly executed an acknowledgement note confirming receipt of the full purchase price. However, Ms Anne has been reluctant to sign the transfer documents in order to transfer the title of the suit property to Mr. White.

In the bundle of documents provided, you have also seen a letter from Sharp & Co. Advocates addressed to Mr. White apparently intending to cancel the sale. This is the extract of the letter:

Sharp & Co. Advocates

*Date: 03/05/2015
Your Reference: ABX
Our Reference: XYZ*

*RE: CANCELLATION OF SALE OF LAND REFERENCE BUSARA BLOCK 50/350:
ANNE TO WHITE*

We refer to the above matter.

We would like to bring to your attention that Ms Anne has decided to cancel the sale with effect from the date of service of this letter to yourselves.

The reason of the cancellation is that our client has secured a better deal, in fact, Mr. Pesa is ready and willing to pay three times the purchase price you had agreed. He has already executed the Agreement for sale with Ms Anne.

Do not worry, we shall refund you Kshs.50,000,000.00 together with a 10% p.a interest.

We should be grateful if you would kindly expedite because time is of essence.

Yours faithfully,

*Sharp & Co. Advocates
Senior Partner*

Mr. White does not want to lose the suit property because of its prime location. He contends that he has fully complied with the terms of the agreement and Ms Anne should complete the sale and transfer the suit property to him.